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The situation in the Middle East

Question of Palestine

Security Council
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Letter dated 29 September 2005 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General

In my capacity as Chairman of the Arab Group for the month of September 2005, and on behalf of the States members of the League of Arab States, I have the honour to enclose a letter dated 29 September 2005, addressed to you from the Arab Group (see annex) concerning the remarks made on 23 September 2005 by Alvaro de Soto, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and Palestine Authority, in his briefing to the Security Council for the month of September 2005 under the Security Council agenda item entitled "The situation in the Middle East, including the Palestinian question" (see S/PV.5270).

I would be grateful if you would have the present letter and its annex circulated as a document of the General Assembly, under agenda items 14 and 15, and of the Security Council.

(*Signed*) Ahmed **Own**
Chargé d'affaires a.i.
Permanent Mission of the Socialist People's Libyan
Arab Jamahiriya to the United Nations
Chairman of the Arab Group

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Annex to the letter dated 29 September 2005 from the Chargé d'affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the Secretary-General

The Arab Group at the United Nations met on Tuesday, 27 September 2005, to review the statement delivered by Alvaro de Soto, United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority, to the Security Council during the briefing that was held on 23 September 2005. It was decided by the Arab Group to communicate to you the position of the Group on this serious matter.

The Arab Group wishes to express its deep concern about the remarks made by Mr. de Soto to the Security Council in his monthly briefing. Mr. de Soto's statement was rife with comments that not only did not reflect established legal and political positions of the United Nations system on several matters, but even called into question and cast shadows of vagueness on these positions. In this regard, the Arab Group believes it is imperative to stress the need for all representatives of the United Nations to adhere to the relevant United Nations resolutions and positions in carrying out their official duties in accordance with their mandates. International law and the relevant resolutions of the United Nations organs must constitute the framework and context of their work and should not be departed from or undermined.

The Arab Group is aware of the letter conveyed on this matter to Ibrahim Gambari, the Under-Secretary-General for Political Affairs, by the Permanent Observer of Palestine to the United Nations and concurs with the important legal arguments conveyed therein. However, the Arab Group wishes to refer to a few additional and very clear legal positions established by the International Court of Justice in its advisory opinion of 9 July 2004 on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (A/ES-10/273 and Corr.1) and endorsed thereafter by Member States in their overwhelming support for General Assembly resolution ES-10/15 of 20 July 2004, which were generally disregarded by Mr. de Soto in his statement to the Council.

In this regard, Mr. de Soto referred repeatedly to Israel's need for security as the reason behind the building of the wall in the Occupied Palestinian Territory, including East Jerusalem, despite the fact that this argument was completely rejected by the International Court of Justice in its advisory opinion. In this regard, the Court stated, inter alia, that: "The Court, from the material available to it, is not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives. The wall, along the route chosen, and its associated regime gravely infringe a number of rights of Palestinians residing in the territory occupied by Israel, and the infringements resulting from that route cannot be justified by military exigencies or by the requirements of national security or public order" (ibid., para. 137).

Moreover, referring the construction of the wall in the Occupied Palestinian Territory, the United Nations Special Coordinator told the Council that the route of the wall "appears to prejudge the final borders of a Palestinian state". Once again, this matter was conclusively addressed by the court, which found that the route of

the wall, which is in departure of the 1967 border (Green Line), does in fact prejudge the final borders. Indeed, the Court stressed that it "cannot remain indifferent to certain fears expressed to it that the route of the wall will prejudge the future frontier between Israel and Palestine, and the fear that Israel may integrate the settlements and their means of access. The Court considers that the construction of the wall and its associated regime create a fait accompli on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation" (ibid., para. 121).

In addition, when speaking of the matter of the settlements, the wall and Occupied East Jerusalem, Mr. de Soto refers only to the position of the Israeli High Court, rather than to the International Court of Justice, the highest judicial body of the United Nations system which should serve as Mr. de Soto's ultimate reference when discussing those very sensitive and crucial issues. Among other things in this regard, the Court clearly stated that "the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements, as deplored by the Security Council" (ibid., para. 122). Thus, while the international community and the Quartet are focusing on the need for a cessation of settlement activities, including in and around East Jerusalem, and are demanding the dismantlement of the settlement outposts, such comments by Mr. de Soto serve only to create ambiguity about the fundamentally illegal nature and status of the settlements and the wall and appear to accommodate the Israeli position rather than reflecting the position of the United Nations, including the International Court of Justice, or even of the Quartet on these matters.

This is unacceptable conduct and it should not be permissible for a senior United Nations official to advocate positions that undermine the established legal positions of the United Nations. The Arab Group thus expresses its hope that efforts will be undertaken to address this serious issue, with a view to ensuring that all United Nations representatives function in conformity with United Nations resolutions and with their respective mandates.

Furthermore, the Arab Group has observed with concern the lack of references in the recent briefings to the need of establishing a just and comprehensive peace in the Middle East, including on the Syrian and Lebanese tracks.

(*Signed*) Ahmed **Own**
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Permanent Mission of the Socialist People's Libyan
Arab Jamahiriya to the United Nations
Chairman of the Arab Group